

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Case No.: 00-41103
(Chapter 11)

FAMILY GOLF CENTERS, INC.,

NOTICE OF MOTION

Debtor.
-----x

S I R S :

PLEASE TAKE NOTICE upon the annexed Affirmation of
COMMERCIAL REFRIGERATION, INC. hearing will come on to be heard as
follows:

DEBTOR:

Family Golf Centers, Inc.

BANKRUPTCY JUDGE AND
LOCATION:

HON. STEWART BERNSTEIN
U.S. Bankruptcy Court, Southern
District of New York, Manhattan
Division, One Bowling Green, New
York, NY 10004-1408

RETURN DATE & TIME:

September 7, 2000 at 10:00 a.m.

RELIEF REQUESTED:

An Order Vacating the Automatic
Stay imposed by 11 U.S.C. §362(a)
so as to permit the Creditor,
COMMERCIAL REFRIGERATION, INC. to
file and perfect a Mechanic's Lien
against the Leasehold interest in
and to the equipment furnished,
sold and installed by COMMERCIAL
REFRIGERATION, INC. at the special
instance and request of the Debtor
at the premises located in New
Rochelle, New York known as the
New Rochelle Twin Rinks and to
thereafter permit the Creditor to
commence a State Court Action to
re-possess the equipment installed
and/or to foreclose the Mechanic's
Lien to be filed against the

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U.S. BANKRUPTCY COURT
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S.D. OF N.Y.

Leasehold interest of the Debtor
and for such other and further
relief as to this court shall deem
just and proper.


Dated: Huntington, NY
August 11, 2000

TO: U.S. Trustee
80 Broad Street
2nd Floor
New York, NY 10004-1408

Fried, Frank, Harris,
Shriver & Jacobson
Attorneys for Debtor
One New York Plaza
New York, NY 10004
ATTENTION: Lawrence A. First

FAMILY GOLF CENTERS, INC.
Debtor
538 Broadhollow Road
Melville, NY 11747

Yours, etc.,


Sidney Holzer
Attorney for Creditor,
COMMERCIAL REFRIGERATION,
INC.
425 New York Avenue
Suite 201
Huntington, NY 11743-0019
(631) 385-2130

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IN RE:

Case No.: 00-41103
(Chapter 11)

FAMILY GOLF CENTERS, INC.,

APPLICATION

Debtor.
-----x

TO THE HONORABLE STEWART BERNSTEIN, U.S. BANKRUPTCY JUDGE:

The Application of COMMERCIAL REFRIGERATION, INC., by
it's attorney, SIDNEY HOLZER, ESQ., respectfully alleges as
follows:

1. This is a contested matter brought pursuant to
Bankruptcy Rules \$4001(a) and 9014 and \$362(b) and 362(b)(2) of
the Bankruptcy Code for an Order terminating, annulling or
modifying the stay imposed under Bankruptcy Code \$362(a) to permit
COMMERCIAL REFRIGERATION, INC. ("Commercial") to enforce it's
right to file a Mechanic's Lien against the Leasehold interest of
the Debtor in premises known as New Rock Ice Rink Facility located
in New Rochelle, New York and to thereafter proceed to foreclose
on said lien in accordance with New York State Law; and to further
exercise it's right of ownership in the equipment furnished and
installed by COMMERICAL consisting of the equipment set forth in
Schedule "A" annexed hereto and made a part hereof.

2. This contested matter arises in a Chapter 11
proceeding pending in the United States Bankruptcy Court for the
Southern District of New York and thereafter referred to the
HONORABLE STEWART BERNSTEIN, U.S. BANKRUPTCY JUDGE.

3. Jurisdiction is conferred on this court pursuant to

the provisions of 11 U.S.C., §362. This is a core proceeding within the meaning of 28 U.S.C. 157(b).

THE AGREEMENT

4. The Debtor heretofore entered into an Agreement with COMMERCIAL on December 17, 1998 wherein and whereby COMMERCIAL agreed to sell and install and Debtor agreed to purchase an Ice Arena Refrigeration System ("System") for which the Debtor agreed to pay the total sum of \$874,565.00, a copy of the Agreement is annexed hereto and made a part hereof.

5. The Creditor has performed each and every obligation on it's part to be performed but the Debtor has failed to make the payments due and payable to COMMERCIAL in the present total sum of \$97,217.75.

6. Upon the debtor's failure to make payments required, COMMERCIAL intended to exercise it's right as set forth in the Agreement which granted the creditor title to the equipment and the debtor granted to the Seller a security interest in the equipment and all it's proceeds, to secure payment and performance of the buyer's obligation pursuant to this Agreement.

7. COMMERCIAL had consulted with counsel relative to the preparation and filing of a Mechanic's Lien against the debtor's leasehold interest in and to the premises known as the New Rock Ice Rink located in New Rochelle, New York. COMMERCIAL could not, by virtue of the filing of the Chapter 11 Bankruptcy proceeding, prepare and file it's Mechanic's Lien and the instant Application requests the court to terminate the stay created by the provisions of §362(a) so that COMMERCIAL can perform it's rights in accordance with the Laws of the State of New York and to thereafter foreclose said Mechanic's Lien.

8. In light of the provisions of the Agreement between the parties, the debtor has no equity in the equipment furnished and such property cannot be deemed necessary to an effective re-organization as the debtor never acquired title in accordance with the Agreement of the parties.

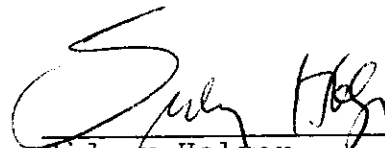
9. The basis for relief pursuant to §362(d)(2) provides as grounds for relief from the stay that the court shall grant relief if "(A) The Debtor does not have equity in such property; (B) Such property is not necessary to an effective re-organization."

10. It is submitted that the basis for relief pursuant to §362(d)(2) is satisfied as the debtor has no equity in the property and upon information and belief the property is not necessary to an effective re-organization.

11. No prior Application for the relief requested herein has been made.

WHEREFORE, based on the foregoing and pursuant to the Bankruptcy Code §362(d)(1) and §362(d)(2) COMMERCIAL hereby requests that this court enter an Order terminating, annulling or modifying the Automatic Stay under Bankruptcy Codes §362(a) to the extent necessary to permit COMMERCIAL to promptly proceed to file it's Mechanic's Lien and to commence the appropriate action in the New York State Courts for such other and further relief as may be just and proper.

Dated: Huntington, NY
August 11, 2000



Sidney Holzer
Attorney for COMMERCIAL
REFRIGERATION, INC.
425 New York Avenue
Suite 201
Huntington, NY 11743-0019
(631) 385-2130

COMMERCIAL REFRIGERATION (U.S.A.) INC.

SALE OF GOODS AGREEMENT

Dated the 17 day of December, 1998

BUYER: FAMILY GOLF CENTERS, INC.

ADDRESS: 225 Broadhollow Road
Suite 106E
Melville, NY 11747

PROJECT NAME AND SITE: NEW ROCHELLE CENTER, TWIN RINKS
New Rochelle, NY

COMMERCIAL REFRIGERATION (U.S.A.) INC. (the "Seller") agrees to sell and install and the Buyer agrees to purchase an ice arena refrigeration system (the "system") on the following terms and conditions:

EQUIPMENT: The Seller agrees to sell and the Buyer agrees to purchase the equipment set out in detail on Schedule 1 (the "Equipment").

ESTIMATED "SKID" DELIVERY DATE: Oct. 30/98

PRICE: The total price of the Equipment will be \$ 874,565.00 based upon details set out in Schedule 1. NY sales tax included.

PAYMENT: Payment of the Price will be in U.S. dollars as follows:

- 1) Twenty five (25%) percent of the Price will be paid at the time that this Agreement is signed by the Buyer; and
- 2) Fifty (50%) percent of the Price will be paid upon delivery of the "Skid", as defined in schedule 1, to the Site (before the "Skid" is off-loaded from the carrier); and
- 3) Fifteen (15%) percent of the Price will be paid upon commissioning of the system; and
- 4) Ten (10%) percent of the Price will be paid within 30 days of commissioning the system.

FAMILY GOLF CENTERS, INC.**PAGE 2**

DELIVERY: All deliveries of the Equipment will be on a CIF (cost, insurance & freight) basis to the Site. This means that the Seller is responsible for clearing the Equipment for export and for paying the brokerage, freight and insurance costs to deliver the Equipment to the Site. Any applicable import duties, value-added or other taxes of the jurisdiction into which the Equipment is being delivered are the responsibility of the Buyer.

OTHER TERMS AND CONDITIONS

1. **Security Interest:** Until the Price is paid in full by the Buyer:
 1. The Seller will retain title to the Equipment and the Buyer grants to the Seller a security interest in the Equipment and all its proceeds to secure payment and performance of the Buyer's obligations under this Agreement;
 2. The Buyer may not remove the Equipment from the Buyer's Site without the Seller's prior written consent;
 3. The Buyer will, at the Buyer's expense, protect the Seller's interest in the Equipment by insuring the Equipment for its full replacement value against all forms of loss or damage, for the benefit of the Seller; and
 4. The Seller will have the right to exercise any rights and remedies granted by any statute or common law to a secured party including the right to take possession of the Equipment and resell, lease or otherwise dispose of it in any of the following circumstances:
 - a) If the Price is not paid in full by the date it is due;
 - b) If the Equipment is pledged as security to a third party;
 - c) If any lien attaches to the Equipment for the benefit of a third party; or
 - d) If the Buyer defaults in performance of any of its obligations under this Agreement.

The provisions of this paragraph 1 survive termination of this Agreement.

2. **Delivery:** Partial delivery will be permitted. Any delivery dates given are estimated only and are based on prompt receipt by the Seller of: (1) an order and all information necessary to permit the Seller to proceed with work immediately and without interruption; (2) the Buyer's compliance with the terms of payment agreed upon. The Seller will not have any liability of any kind for any failure to meet this date.

FAMILY GOLF CENTERS, INC.
PAGE 3

3. Job Site Scheduling:

- 1) If scheduling circumstances on the job site are such that the planned starting date for Commercial Refrigeration (USA) Inc. (as advised by the seller in writing) is delayed, the additional costs for overtime labor will be accepted by the Buyer as a legitimate extra expense and such overtime expenses will be paid to the Seller by the Buyer.
- 2) If the "skid" unit is ready to be shipped on the scheduled date, and the job site is not able to accept same, payment number two (2) will be forwarded the Seller as if the unit were shipped to site. The Seller is willing to store the skid in the storage yard in our Edmonton, Alberta facility, for an indefinite period, providing payment Number two (2) has been made to Commercial Refrigeration (USA) Inc.

4. **Warranty:** The Seller warrants that the components of the Equipment will be free from defects arising from faulty materials, workmanship or design for a period ("Warranty Period") that is 12 months from the date of start up of the Equipment by the Seller or a technician that the Seller considers, in its sole discretion, qualified provided that notice and satisfactory proof of any defect is promptly given by the Buyer to the Seller. The Seller's obligations under this paragraph 3 during the Warranty Period are limited to, at the Seller's option:

- (a) repairing or replacing the defective Equipment, or defective parts; or
- (b) refunding the Price of the defective Equipment, or defective parts.

The Seller gives no warranties respecting the Equipment other than those contained in this paragraph 3, and specifically gives no warranty for the merchantability of the Equipment or its fitness for a particular use. For any of the Equipment supplied under this Agreement which is manufactured by others, the Seller gives no warranty and only the warranty, if any, given by the manufacturer will apply.

The warranties in this paragraph 3 are solely for the benefit of the Buyer, are the Seller's sole liability and the Buyer's sole remedy, and are in lieu of all other warranties and conditions, written or verbal, statutory, express or implied. Without limitation, the Seller will not be liable for any damages:

- I. that are special, indirect or consequential, however caused;
- II. arising from loss of profits;
- III. arising from any claim against the Buyer by any other party; or
- IV. arising from Equipment that has been altered by any one other than the Seller.

The provisions of this paragraph 3 survive termination of this Agreement.

FAMILY GOLF CENTERS, INC.**PAGE 4**

5. **Government Authorizations:** The Buyer will obtain all necessary import licenses, permissions and consents necessary for the full and legal performance of this Agreement in the jurisdiction where the Equipment is delivered.

6. **Force Majeure:** The Seller will not be liable for delay in or non-performance of the Agreement or any part thereof, resulting directly or indirectly from: (1) an act of God, including epidemics, earthquakes, storms, fires, flood, lightening; (2) an act of any governmental authority, domestic or foreign, including but not limited to war, declared or undeclared, priorities, quarantines, embargoes, licensing controls or production or distribution restrictions; (3) accidents and disruptions including but not limited to explosions, breakdowns of essential machinery or equipment and power shortages; (4) transportation or storage delays, accidents or shortages; (5) labor difficulties including but not limited to strikes, slowdowns, lockouts, sabotage and labor shortages; (6) failure or delay in its source of supply; (7) acts or omissions of the Buyer, its directors, employees, agents and independent contractors; or any other cause beyond the Seller's reasonable control, whether similar or dissimilar to those listed in this paragraph.

7. **Dispute resolution:** All disputes, controversies or claims arising out of or relating to this Agreement, including any question regarding its existence, validity or termination, will finally settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL Rules). The appointing authority will be the Alberta Arbitration and Mediation Society. The number of arbitrators will be one. The place of the arbitration will be Los Angeles, CA. The language to be used in the arbitral proceedings will be English. The provisions of this paragraph survive termination of this Agreement.

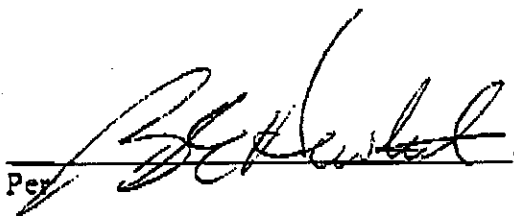
8. **General**

- 1) The parties agree that the application of the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement and is strictly excluded.
- 2) The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision.
- 3) This Agreement may be modified or amended only upon written agreement of the parties.
- 4) Unless otherwise provided in this Agreement, all references to dollar amounts are expressed in terms of lawful money of the United States.
- 5) No waiver by the Seller of a right or breach under this Agreement will be effective unless in writing. Any such waiver will not be deemed a waiver of any subsequent right or breach whether of similar nature or otherwise. No delay or omission by the Seller to exercise any right resulting from a breach by the Buyer will impair the Seller's right or effect a waiver of that right.

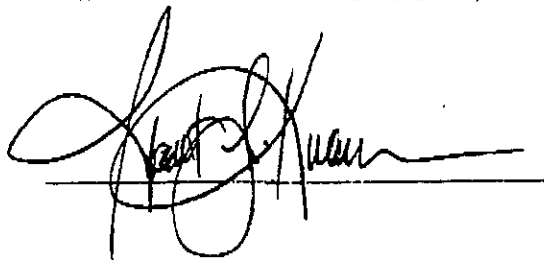
FAMILY GOLF CENTERS, INC.
PAGE 5

- 6) The provisions of this Agreement constitute the entire agreement between the parties. No terms or conditions or agreement or undertakings other than those stated in this Agreement will be binding on either party unless they are in writing and signed by the authorized representatives of both parties.
- 7) "Schedule 1" is incorporated into and forms part of this Agreement.

Commercial Refrigeration (U.S.A.) Inc.

Per 

FAMILY GOLF CENTERS, INC.



FAMILY GOLF CENTERS, INC.
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SCHEDULE 1

**SCHEDULE 1 to the Agreement between
Commercial Refrigeration (U.S.A.) Inc. and
FAMILY GOLF CENTERS, INC.**

Equipment:

- A) 1 only "Skid" mounted refrigeration system, consisting of three refrigeration compressors, one shell and tube style chiller vessel, various pumps and one electrical panel. Skid to be completely wired and piped between the various mechanical components.
- B) 1 only BAC evaporative condenser, model CXV-253-MM.
- C) 2 only Heating and Cooling systems (piping only) for ice rink floors, complete with piping to connect floors to refrigeration plant.
- D) Concrete work for the two floors as specified.